

(2011) 07 JH CK 0066

Jharkhand High Court

Case No: Writ Petition (S) No. 5638 of 2009

Jugal Kishore Saran

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: July 8, 2011

Acts Referred:

- Bihar Pension Rules, 1950 - Rule 151
- Bihar/Jharkhand Pension Rules, 1950 - Rule 151(d)
- Constitution of India, 1950 - Article 226

Citation: (2011) 4 JCR 139

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Judgement

P.P. Bhatt, J.

Heard the learned counsel for the parties.

2. The present petition is filed by the petitioner under Article 226 of the Constitution of India with a prayer for issuance of an appropriate writ/order/direction in the nature of mandamus commanding upon the respondents to release the arrears of additional pay for working as District Malaria Officer on officiating basis from 31st May, 1981 till the date of his retirement in 1992 and also consequentially revise and release retiral benefits thereof with interest @ 18 per cent per annum from the date due till actual payment is made.

3. The learned counsel for the petitioner has made it clear that so far the prayer as it relates to the arrears of additional pay is concerned, is not pressed, as the same is already paid as per the decision of the State Government in Clause 2 (ix) of Memo No. 14794 F., dated 30th December, 1968. The learned counsel for the petitioner has invited the attention of this Court that after rejection of writ petition by the learned single Judge, the L.P.A. was preferred vide L.P.A. No. 57 of 1998 and vide order dated 17.6.2002. the said L.P.A. was allowed and the impugned judgment, passed in

C.W.J.C. No. 324 of 1996 (R) was set aside and consequentially, the order rejecting the claim of the petitioner for additional pay was also quashed. The respondents were directed to make payment of allowances to the petitioner, admissible under Rule 103 of the Code from the date of officiating the post of District Malaria Officer till the date of retirement.

4. As the said order was not complied with by the State, the Contempt Case (C) No. 785 of 2003 was filed by the petitioner. The said Contempt application was disposed of, by order dated 18th December, 2004, which reads as under :--

A show cause has been filed on behalf of opposite party No. 1 and two others on behalf of opposite party Nos. 4 and 5 (jointly) and opposite party Nos. 2 and 6 (jointly) wherein same plea has been taken by them that they have paid additional allowance in terms of Rule 103 of the Bihar Service Code at the rate of Rs. 250/- per month to the petitioner.

Counsel appearing on behalf of the petitioner submits that lesser amount has been paid as the petitioner is entitled to 20 % of the basic pay. It is also submitted that the opposite parties have not paid the retiral benefits adding the allowance as he is entitled, in pursuance of the Court's order. The additional pay should have been added along with the basic pay.

Having regard to the facts and circumstances, this Court is not inclined to proceed with the contempt proceedings. If the petitioner is entitled for further amount towards additional pay and/or is entitled for consequential revision of pension, gratuity and leave encashment may move separately before an appropriate authority/Court of competent jurisdiction. This application stands disposed of.

5. The learned counsel for the petitioner has also invited attention of this Court to Page 34 (Annexure 7/1) i.e. letter issued by the Joint Secretary, Finance Department, Government of Jharkhand, inter alia, stating that the claim of the petitioner for consequential revision of retirement benefits on additional pay already paid to the petitioner, is not admissible in view of Rule 151 (d) of the Jharkhand Pension Rules as the said revision of pay cannot be treated as part of substantive pay or special pay as provided under sub-clauses (a) and (d) of the said Rule. Being aggrieved and dissatisfied with the said decision, the present petition is filed.

6. The learned counsel for the petitioner has submitted that appropriate direction may be given to the State Government to consider the case of the petitioner in view of Rule 151 (f) of the Bihar Pension Rules, 1950.

7. Rule 151 (f) of the Bihar Pension Rules, 1950 reads as under :

Rule 151 : The term "Emoluments" as used in respect of the ordinary pensions means the emoluments which the Government Servant was receiving immediately before his retirement and includes-

(f) provisional substantive pay or the differences between the substantive pay and the officiating pay of a Government servant holding substantively a permanent post who is appointed provisionally under Rule 74 (d) of the Bihar & Orissa Service Code or in an officiating capacity under the rule in Section II of Chapter IV of the Bihar Service Code, to a post which is substantively vacant and on which no Government servant has a lien or to a post temporarily incumbent on extraordinary leave without pay or transfer to foreign service.

8. The learned counsels for the State of Jharkhand and the State of Bihar has submitted that for want of requisite and sufficient service record of the petitioner, they are not in a position to take appropriate decision and the petitioner has not supplied any documents of his service records to the State of Jharkhand, to which the learned counsel for the petitioner has denied that the petitioner has already supplied relevant information to the concerned authorities of the respective States. It is also submitted that the last decision was communicated by the Joint Secretary of the Finance Department of the State of Jharkhand and therefore, appropriate decision will have to be taken by the Joint Secretary, Finance Department of the State of Jharkhand, keeping in mind, the provision of Rule 151 (f) of the Bihar Pension Rules, 1950.

9. The learned counsel for the petitioner has also submitted that the petitioner is suffering from "Cancer" and therefore, a suitable direction may be issued to the State of Jharkhand to decide this issue within a stipulated time so that the petitioner can avail the benefits.

10. Having regard to the facts and circumstances of the present case and more particularly in view of the provisions of Rule 151 (f) of the Bihar Pension Rules, 1950, the Joint Secretary, Department of Finance, State of Jharkhand is required to take appropriate decision in respect of the petitioner's claim within a period of two months from the date of receipt/production of a Copy of this order. Accordingly, the Finance Department, State of Jharkhand shall take the final decision in the matter. Let the decision taken in this regard be communicated to the petitioner and in case of any difficulty or adverse decision, the petitioner will be at liberty to move this Court afresh. The Joint Secretary, Department (sic) Finance, State of Jharkhand is also directed to communicate his decision to the Accountant General Office, Bihar, Patna for taking further appropriate decision in this regard, if the decision is taken in favour of the petitioner.

11. This writ application stands disposed of, accordingly.